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ILLINOIS ADMINISTRATIVE CODE

\*\*\* THIS DOCUMENT IS CURRENT THROUGH APRIL 17, 2009 \*\*\*

TITLE 83. PUBLIC UTILITIES  
CHAPTER I. ILLINOIS COMMERCE COMMISSION  
SUBCHAPTER c. ELECTRIC UTILITIES

PART 451. CERTIFICATION OF ALTERNATIVE RETAIL ELECTRIC SUPPLIERS

83 Ill. Adm. Code 451 (2009)

Title 83, Part 451 -- Authority & General Source

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**AUTHORITY:** Implementing and authorized by Section 16-115 of the Public Utilities Act [220 ILCS 5/16-115].

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83 Ill. Adm. Code 451

GENERAL SOURCE: Adopted at 23 Ill. Reg. 5528, effective May 1, 1999; amended at 23 Ill. Reg. 13820, effective December 1, 1999; amended at 24 Ill. Reg. 15971, effective October 15, 2000; amended at 26 Ill. Reg. 7039, effective May 1, 2002; expedited correction at 26 Ill. Reg. 15115, effective May 1, 2002; amended at 32 Ill. Reg. 17126, effective November 1, 2008.

## SUBPART A. GENERAL PROVISIONS

83 Ill. Adm. Code 451.10 (2009)

### § 451.10 Definitions and Incorporations

"Accountant's report" has the same meaning as in 17 CFR 210.1-02 and 210.2-02 as of April 1, 2001. No incorporation of the Code of Federal Regulations in this Section 451.10 includes any later amendment or edition.

"Act" means the Public Utilities Act [220 ILCS 5].

"Alternative retail electric supplier" or "ARES" has the same meaning as in Section 16-102 of the Act [220 ILCS 5/16-102].

"Applicant" means an entity that files an application with the Illinois Commerce Commission to provide electric service as an alternative retail electric supplier under Section 16-115 of the Act [220 ILCS 5/16-115].

"Best's financial size category" refers to a numerical value that A.M. Best or its successor assigns to an insurance company based on the amount of that insurance company's policyholder's surplus and reserve funds.

"Best's rating" refers to a rating from A.M. Best or its successor that provides an overall opinion of an insurance company's ability to meet its obligations to policyholders.

"Business enterprise" means a commercial enterprise or establishment.

"Certified", when used in regard to financial statements, has the same meaning as in 17 CFR 210.1-02 as of April 1, 2001. No incorporation of the Code of Federal Regulations in this Section 451.10 includes any later amendment or edition.

"Commercial general liability insurance" means insurance that covers suits against the insured for personal injury and property damages.

"Commission" means the Illinois Commerce Commission.

"Electric cooperative" means the same as that term is defined in Section 3.4 of the Electric Supplier Act [220 ILCS 30/3.4].

"Financial statements" has the same meaning as in 17 CFR 210.3-01 to 210.3-05 as of April 1, 2001. No incorporation of the Code of Federal Regulations in this Section 451.10 includes any later amendment or edition.

"Guarantee" means an undertaking by a guarantor to pay or fulfill the obligation upon failure of the principal obligor to fulfill its contractual obligations. A guarantee shall contain the following provisions:

The guarantee is one of payment and not of collection;

The guarantor's obligations under the guarantee are weighed equally with other guarantees;

The obligations from transactions entered into under the original guarantee must be the subject of an ongoing guarantee;

**Deleted:** "Funds from operations interest coverage" equals (cash flow from operations exclusive of changes in working capital plus gross interest expense) divided by gross interest incurred before subtraction of capitalized interest and interest income.¶

"Funds from operations to average total debt" equals (cash flow from operations exclusive of changes in working capital plus depreciation adjustment for operating leases) divided by the average balance of total debt.¶

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83 Ill. Adm. Code 451.10

The guarantee reinstates if any guaranteed payment made by the primary obligor is recaptured as a result of bankruptcy or insolvency; and

The guarantee is binding on successors of the guarantor.

"Letter of credit" means an instrument issued by a bank guaranteeing the payment of a customer's (i.e., the applicant or ARES) drafts in favor of a third party up to a stated amount for a specified period.

"License bond" means an obligation of a surety to pay the monies that the licensee owes the State of Illinois for violations of the duties and obligations imposed on it as an ARES.

"Management position" means an employed position whereby an individual is responsible for directing, supervising, or administering the activities of a group of two or more people with fiscal responsibility and authority over that group.

"Material" has the same meaning as in 17 CFR 210.1-02 as of April 1, 2001. No incorporation of the Code of Federal Regulations in this Section 451.10 includes any later amendment or edition.

"Municipal system" means any public utility owned and operated by any political subdivision or municipal corporation of the State of Illinois, or owned by such an entity and operated by any lessee or agent thereof.

"Parent" has the same meaning as in 17 CFR 210.1-2 as of April 1, 2001. No incorporation of the Code of Federal Regulations in this Section 451.10 include any later amendment or edition.

"Payment bond" means an obligation of a surety to pay the monies that the principal (i.e., the applicant or ARES) owes another party in the event that the applicant fails for whatever reason to perform its contract(s).

"Permit bond" has the same meaning as "license bond".

"Qualifying surety" means a surety or insurer that is authorized by the U.S. Department of Treasury pursuant to 31 USC 9305. A qualifying surety or insurer may not underwrite more than the amount specified by the U.S. Department of Treasury on a single bond.

"Ratings agency" means Standard & Poor's or its successor, Moody's Investors Service or its successor, or Fitch Ratings or its successor.

"Retail customer", as used in this Part, means the same as the term is defined in Section 16-102 of the Act.

"Segment" refers to a component of an entity whose activities represent a separate major line of business or class of customer.

"Small commercial retail customer" means the same as the term is defined in Section 16-102 of the Act.

"Surplus Line Association of Illinois" is an organization of Illinois surplus line producers as defined in Section 445.1 of the Illinois Insurance Code [215 ILCS 5/445.1].

"Technical staff" means a staff of trained technical experts in electric power and energy supply, including persons who have completed an accredited or otherwise recognized apprenticeship program or a formal education program and persons who possess no less than four years of experience working in a similar position with a utility, ARES or related business. This shall also include those

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**Deleted:** "Pre-tax interest coverage" equals earnings from continuing operations before interest and taxes divided by gross interest incurred before subtraction of capitalized interest and interest income.¶

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persons registered as professional engineers as required by the Professional Engineering Practice Act of 1989 [225 ILCS 325].

¶"Unconditional guarantee" has the same meaning as "guarantee" with these additional provisions:

The guarantor has subjected itself to jurisdiction and service of process in accordance with the laws of the State of Illinois, and the guarantee will be construed in accordance with the laws of the State of Illinois without reference to conflict of laws principles; and

The guaranteed obligations are unconditional, irrespective of value, genuineness, validity, waiver, release, alteration, amendment, and enforceability of the guaranteed obligations.

**SOURCE:**

Amended at 24 Ill. Reg. 15974, effective October 15, 2000.

Amended at 26 Ill. Reg. 7039, effective May 1, 2002.

**Deleted:** "Total debt" equals notes payable plus current portion of long-term debt, preferred stock and capitalized lease obligations plus long-term debt plus capitalized lease obligations plus total off balance sheet debt.¶  
"Total debt to total capitalization" equals total debt divided by (total debt plus minority interest, total preferred and preference stock plus common equity).¶

83 Ill. Adm. Code 451.20 (2009)

§ 451.20 Requirements for All Applicants under Section 16-115(d) of the Act

Each applicant, except electric cooperatives or municipal systems making an election under Section 17-300 of the Act [220 ILCS 5/17-300] to become an ARES and applicants filing under Section 16-115(e) of the Act [220 ILCS 5/16-115(e)], for certification as an ARES must include with its application the following items, as required by Section 16-115(d) of the Act:

a) The applicant shall certify that it will comply with all applicable Federal, State, regional and industry rules, policies, practices, procedures and tariffs for the use, operation, maintenance, safety, integrity, and reliability of the interconnected electric transmission system and shall agree to submit good faith schedules of transmission and energy in accordance with applicable tariffs.

b) The applicant shall certify that it will comply with informational and reporting requirements that the Commission may by rule establish, and provide for review by Staff on a confidential and proprietary basis data related to contracts for the purchase and sale of electric power and energy [220 ILCS 5/16-115(d)(4)].

c) ~~x~~—

) The applicant shall provide the following:

1) Applicant's name and street address;

2) Applicant's Federal Employer Identification Number (FEIN); and

3) Names and addresses of all the applicant's affiliated companies involved in electric retail sales or purchases in the North American Continent.

d) The applicant shall demonstrate that:

1) The applicant is licensed to do business in the State of Illinois; and

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**Deleted:** (including the Open Access Same-time Information System (OASIS) mandated by 18 CFR 37 and the rules and operating guidelines and procedures of the regional or national electric reliability council(s) or organization(s) and their successors for any portion of the state in which the applicant is certified to provide retail electric service)

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**Deleted:** b) The applicant shall certify that it will provide service only to retail customers that are eligible to take delivery services.¶

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**Deleted:** The applicant shall certify that it will comply with informational and reporting requirements that the Commission may establish, regarding the provision of information required by Section 16-112 of the Act [220 ILCS 5/16-112]. Any data related to contracts for the purchase and sale of electric power and energy shall be made available for review by the Staff of the Commission on a confidential and proprietary basis and only to the extent and for the purposes that the Commission determines are reasonably necessary in order to carry out the purposes of this Act

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2) The employees of the applicant that will be installing, operating, and maintaining generation, transmission, or distribution facilities within the State of Illinois, or any entity with which the applicant has contracted to perform those functions within the State of Illinois, have the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service.

e) The applicant shall certify compliance with all other applicable laws and regulations and Commission rules and orders.

f) The applicant shall certify it will procure renewable energy resources as required by Section 16-115D and subsection (d) of Section 16-115 of the Act, or shall state that it has or intends to seek a determination pursuant to Section 455.150 of the Commission's rules that Section 16-115D and subsection (d) of Section 16-115 of the Act do not apply to it pursuant to subsection (h) of Section 16-115D of the Act [220 ILCS 5/16-115D(h)].

g) The applicant shall certify that it will source electricity from clean coal facilities, as required by Section 16-115(d)(5) of the Act [220 ILCS 5/16-115(d)(5)].

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#### SOURCE:

Amended at 24 Ill. Reg. 15974, effective October 15, 2000.

Amended at 32 Ill. Reg. 17126, effective November 1, 2008.

83 Ill. Adm. Code 451.30 (2009)

#### § 451.30 Required Filings and Procedures

a) The applicant shall publish, as provided by the Notice by Publication Act [715 ILCS 5], notice of its application for certification in the Official State Newspaper within 10 days following the filing of the application for certification. The applicant shall file proof of publication with the Clerk of the Commission within 5 days following publication.

b) All applications for certification under this Part shall be verified as required by Section 200.130 of the Commission's "Rules of Practice" (83 Ill. Adm. Code 200.130).

c) The applicant shall identify the geographic area or geographic areas in which the applicant seeks to be authorized to offer service and the types of services it intends to offer. The applicant shall provide the following:

1) Description of the applicant's business;

2) Description of the characteristics of customer group(s) applicant proposes to serve; and

3) Proof that notification of intent to serve in any utility's service area has been previously provided to the agent designated by the electric utility pursuant to 83 Ill. Adm. Code 215.10 of each electric utility in whose service area the applicant intends to serve.

d) Itemized filing requirements

1) At the time an ARES files an application for certification under this Part, the applicant shall also file its statement in support of application, supporting documents, and schedules containing in-

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formation showing that the applicant meets the requirements of Section 16-115 of the Act [220 ILCS 5/16-115]; and

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2) The applicant shall certify compliance with all terms and conditions required by Sections 16-115A(a), (b) and (f), 16-119, 16-123, 16-125(b) and (c), 16-127, and 16-128(a) of the Act, to the extent those Sections have application to the services being offered by the alternative electric supplier [220 ILCS 5/16-115A(a), (b) and (f), 16-119, 16-123, 16-125(b) and (c), 16-127, and 16-128(a)].

e) Documents shall include the full name, address, telephone number, and, unless the applicant has no facsimile number or e-mail address, facsimile number and e-mail address of the applicant. An applicant shall state whether it agrees to accept service by electronic means as provided for in Section 200.1050 of the Commission's "Rules of Practice" (83 Ill. Adm. Code 200.1050). In addition documents shall be typewritten or printed on white paper 8½ inches by 11 inches or capable of being printed on white paper 8½ inches by 11 inches and shall have inside text margins of not less than one inch.

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f) The foregoing requirements of this Section shall apply to neither electric cooperatives or municipal systems making an election under Section 17-300 of the Act to become an ARES nor to applicants filing under Section 16-115(e) of the Act.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000

83 Ill. Adm. Code 451.40 (2009)

#### § 451.40 Customer Records and Information

a) The applicant shall agree to adopt and follow rules and procedures ensuring that authorizations received from customers, customer billing records, and requests for delivery service transmitted to utilities are retained for a period of not less than two calendar years after the calendar year in which they were created. In addition to other lawful means of discovery, these records shall be made available by request to the Commission or its Staff on a confidential and proprietary basis, as necessary to carry out the Commission's obligations under the Act.

b) The applicant shall preserve the confidentiality of its customers' data and shall agree to adopt and follow rules and procedures to preserve the confidentiality of its customers' data.

c) The foregoing requirements of this Section shall apply to neither electric cooperatives nor municipal systems making an election under Section 17-300 of the Act to become an ARES nor to applicants filing under Section 16-115(e) of the Act.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000

83 Ill. Adm. Code 451.50 (2009)

#### § 451.50 License or Permit Bond Requirements



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a) The applicant shall execute and maintain a license or permit bond issued by a qualifying surety or insurance company authorized to transact business in the State of Illinois in favor of the People of the State of Illinois. The amount of the bond shall equal \$ 30,000 if the applicant seeks to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more, \$ 150,000 if the applicant seeks to serve nonresidential retail customers with annual electrical consumption greater than 15,000 kWh, or \$ 300,000 if the applicant seeks to serve all eligible retail customers. The bond shall be conditioned upon the full and faithful performance of all duties and obligations of the applicant as an ARES and shall be valid for a period of not less than one year. The cost of the bond shall be paid by the applicant. The applicant shall file a copy of this bond, with a notarized verification page from the issuer, as part of its application for certification.

b) In the event that a license or permit bond is cancelled, expires or is drawn upon, the ARES shall execute and maintain an additional or replacement bond such that the cumulative value of all outstanding bonds never falls below the amount required in subsection (a) of this Section. The ARES shall file a copy of the additional or replacement bond with the Chief Clerk of the Commission and provide a copy to the “Financial Analysis Division - ARES” or its successor at least 15 days in advance of the effective date of the bond. The filing shall include a cover letter that explains the purpose of the filing and shall be identified by the name of the ARES as it appears in the most recent Commission order granting the ARES certification.

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c) In the event that a license or permit bond is modified, the ARES shall file a copy of the modified bond with the Chief Clerk of the Commission and provide a copy of that bond to the “Financial Analysis Division - ARES” or its successor at least 15 days in advance of the effective date of the modification. The filing shall include a cover letter titled “Code Part 451 License or Permit Bond” that explains the purpose of the filing and shall be identified by the name of the ARES as it appears in the most recent Commission order granting the ARES certification.

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d) The requirements of this Section shall apply to neither electric cooperatives nor municipal systems making an election under Section 17-300 of the Act to become an ARES nor to applicants filing under Section 16-115(e) of the Act.

Added at 24 Ill. Reg. 15974, effective October 15, 2000

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*83 Ill. Adm. Code 451.60 (2009)*

§ 451.60 Confidential Documentation

If an applicant or ARES believes any of the information to be disclosed by an applicant or ARES is privileged or confidential, the applicant or ARES should request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies pursuant to *83 Ill. Adm. Code 200.430*. The applicant or ARES shall designate which information is privileged and confidential. Such information shall be marked as "confidential" and submitted separately under seal to the Chief Clerk of the Commission. The applicant or ARES is required to explain why that information is entitled to that protection in a supporting document pursuant to Section 451.30(d)(1).

Added at 24 Ill. Reg. 15974, effective October 15, 2000

SUBPART B. PROCEDURES FOR APPLICANTS SEEKING TO SERVE ONLY NONRESIDENTIAL RETAIL CUSTOMERS WITH MAXIMUM ELECTRICAL DEMANDS OF ONE MEGAWATT OR MORE

*83 Ill. Adm. Code 451.100 (2009)*

§ 451.100 Applicability of Subpart B

This Subpart shall apply only to the certification of all alternative retail electric suppliers that seek to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more as required by Section 16-115(f) of the Act [220 ILCS 5/16-115(f)] except as noted. The requirements of this Subpart are in addition to the requirements of Subpart A. This Subpart applies to neither electric cooperatives nor municipal systems making an election under Section 17-300 of the Act to become an alternative retail electric supplier.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000

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*83 Ill. Adm. Code 451.110 (2009)*

§ 451.110 Financial Qualifications under Subpart B

a) An applicant shall be deemed to possess sufficient financial capabilities to serve nonresidential retail customers with maximum electrical demand of one megawatt or more if the applicant meets any of the following criteria:

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1) The applicant maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, or F-2 or higher from Fitch Ratings or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor.

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The applicant shall provide with its application a copy of the ratings agency reports that present the ratings of the applicant.

2) The applicant maintains one or more lines of credit with Regional Transmission Organizations (“RTOs”) and/or unaffiliated wholesale suppliers for electric energy for delivery to the service territories of the utilities for which the applicant is seeking a certificate.

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AThe amount of credit available to the applicant under the credit agreement(s) shall in aggregate be no less than the greater of \$ 500,000 or 5% of the amount of the applicant's revenue for its most recently completed 12-month fiscal year. That amount of revenue must appear in the applicant's certified financial statements, or those of the applicant's parent, that have received an accountant's report that certifies those financial statements to be free of material misstatement. If the applicant is using the certified financial statements of its parent, the minimum required amount of credit available under the credit agreement(s) shall be determined using the applicable revenue amount from the segment information section of the certified financial statements of the applicant's parent, as follows:

Deleted: A) The affiliate must have at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor; or F-2 or higher from Fitch Ratings or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor.¶

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i) If the applicant is listed separately in the segment information section, the applicant's revenue shall be used.

ii) If the segment information section is broken down by operation, or other means, the revenue for the entire segment of which the applicant is part shall be used, unless a certified breakdown of the segment by company is provided.

In the alternative, the applicant's revenue from sales to Illinois retail customers may be used; in such circumstances, the revenue from sales to Illinois retail customers must be provided in the certified financial statements or in internal documents accompanied by a verified statement from a company officer.

B) The credit agreement shall be valid for a period of not less than one year.

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C) The applicant shall provide a copy of the following:

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i) A schedule, with references to each input of the calculation, showing the currently available amount of each line of credit, including all deductions resulting from any covenants or other limitations governing each agreement;

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ii) The credit agreement(s);

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iii) The applicant's certified financial statements, including the accountant's report, or those of the applicant's parent, as applicable; and

iv) If the applicant's revenue from sales to Illinois retail customers is to be used, the applicant must submit certified financial statements that present this information, or internal documents that present this information and a verified statement from a company officer attesting to the accuracy of those internal documents; and

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v) A schedule showing the 5% of revenue calculation, with a reference to the applicant's certified financial statements, certified letter from officer of applicant verifying Illinois revenue, or internal documents, as applicable, provided for the revenue input of the calculation.

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3) The applicant demonstrates and certifies it is a member of one or more Regional Transmission Organizations ("RTOs") and purchases 100% of its physical electric energy from the RTOs for delivery to the service territories of the utilities for which the applicant is seeking a certificate.

4) The applicant certifies that it will offer to reimburse its Illinois retail customers for the additional costs those customers incur to acquire electric energy as a result of the applicant's failure to comply with a contractual obligation to supply such energy. Any resulting obligation of the applicant to reimburse Illinois retail customers shall be covered by an unconditional guarantee, payment bond, or letter of credit payable to the incumbent utility in favor of bundled rate customers to be credited through the applicable purchased power rider for each service territory the applicant serves. Any dollar limitation on the unconditional guarantee, payment bond, or letter of credit shall equal not less than the product of 1080 times the applicant's expected peak hourly demand expressed in megawatts over the next twelve months times the average of the 45 highest daily market prices of electric energy traded during the previous year. Each January, the Commission shall choose a published price index for electricity for use in this subsection (a)(4). The daily market price of electric energy shall equal the published price index for electricity traded in Illinois, except in the event that no price index for electricity traded in the State of Illinois is published, then the daily market price of electricity shall be determined by the use of a published price index for electricity traded at the nearest location to the State of Illinois. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one year.

A) Unconditional Guarantee. The guarantor shall maintain at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, or F-2 or higher from Fitch Ratings or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor. The applicant shall provide a copy of the following:

- i) The ratings agency reports that present the ratings of the affiliate that is the guarantor;
- ii) The unconditional guarantee; and
- iii) A good faith estimate of the applicant's expected peak hourly demand expressed in MWs over the next twelve months.

B) Payment Bond. The payment bond or payment bonds shall be issued by a qualifying surety authorized to transact business in the State of Illinois or by a surety whose Best's rating is A- or better and whose Best's financial size category is VII or larger, and whose contract of insurance is issued pursuant to Section 445 or 445a of the Illinois Insurance Code [215 ILCS 5/445 or 445a] and countersigned by the Surplus Line Association of Illinois or its successor. The applicant shall provide a copy of the following:

- i) The payment bonds or the contract of insurance with the countersignature of the Surplus Line Association of Illinois or its successor as applicable;

Deleted: The obligations of the applicant to unaffiliated companies arising from the acquisition of electric energy that can be delivered to retail customers in the State of Illinois, for sale, lease or in exchange for other value received, are covered under a guarantee, payment bond, or letter of credit.¶  
A) The guarantee, payment bond, or letter of credit shall be in an amount that is no less than the greater of \$ 500,000 or 5% of the amount of the applicant's revenue from the sale of electric energy for the most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financial statements, or those of the applicant's parent, that have received an accountant's report that certifies those financial statements to be free of material misstatement. If the applicant is using the certified financial statements of its parent, the amount of credit available under the borrowing agreement shall be determined using the applicable revenue amount from the segment information section of the certified financial statements of the applicant's parent.¶

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ii) Documentation demonstrating that the surety issuing the payment bond is a qualified surety authorized to transact business in the State of Illinois or a surety with a satisfactory Best's rating, as applicable; and

iii) A good faith estimate of the applicant's expected peak hourly demand expressed in MWs over the next twelve months.

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C) Letter of Credit. The letter of credit shall be irrevocable and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, or A- or higher from Fitch Ratings or its successor. The applicant shall provide a copy of the following:

i) The letter of credit;

ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit; and

iii) A good faith estimate of the applicant's expected peak hourly demand expressed in MWs over the next twelve months.

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5) The applicant maintains a line of credit or revolving credit agreement.

A) The line of credit or revolving credit agreement must be from a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, or A- or higher from Fitch Ratings or its successor.

B) The amount of the line of credit or revolving credit agreement shall be no less than the greater of \$ 500,000 or 5% of the amount of revenue for the most recently completed 12-month fiscal year. That amount of revenue must appear in the applicant's certified financial statements, or those of the applicant's parent, that have received an accountant's report that certifies those financial statements to be free of material misstatement. If the applicant is using the certified financial statements of its parent, the minimum required amount of credit available under the line of credit or revolving credit agreement shall be determined using the applicable revenue amount from the segment information section of the certified financial statements of the applicant's parent.

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i) If the applicant is listed separately in the segment information section, the applicant's revenue shall be used.

ii) If the segment information section is broken down by operation, or other means, the revenue for the entire segment of which the applicant is part shall be used, unless a certified breakdown of the segment by company is provided.

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C) The line of credit or revolving credit agreement shall be valid for a period of not less than one year.

D) The applicant shall provide a copy of the following:

i) The line of credit or revolving credit agreement;

ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit;

iii) The certified financial statements, including the accountant's report, of the applicant or those of the applicant's parent, as applicable; and

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iv) A schedule showing the 5% of revenue calculation, with a reference to the applicant's certified financial statements provided for the revenue input of the calculation.

**SOURCE:**

Amended at 24 Ill. Reg. 15974, effective October 15, 2000.

Amended at 26 Ill. Reg. 7039, effective May 1, 2002.

*83 Ill. Adm. Code 451.120 (2009)*

**§ 451.120 Technical Qualifications under Subpart B**

a) An applicant that uses electric generation, transmission or distribution facilities that it owns, controls, or operates in serving customers shall be deemed to possess sufficient technical capabilities to serve retail customers identified in this Subpart if it maintains a technical staff on duty or on call 24 hours each day to operate and maintain applicant's facilities as needed. The applicant's technical staff must have a at least two years buying or selling power and energy in wholesale markets. The applicant shall also demonstrate its ability to provide, or that it has arranged to provide, a scheduling facility with 24-hour staffed operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

b) Any other applicant shall be deemed to possess sufficient technical capabilities to serve retail customers identified in this Subpart if it has staff with two years buying or selling power and energy in wholesale markets and provides, or, arranged to provide, a scheduling facility with 24-hour staffed operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

c) The applicant shall include in its application an exhibit that identifies, by name and job title, the person(s) on its staff, and agents or contractors utilized pursuant to Section 451.140, with the technical experience required under Subpart B. The exhibit shall provide a description of the relevant occupational experience for each person, including the dates and locations of the experience being used to meet each experience requirement of this Section.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000

*83 Ill. Adm. Code 451.130 (2009)*

**§ 451.130 Managerial Qualifications under Subpart B**

An applicant shall be deemed to possess sufficient managerial capabilities to serve retail customers identified in this Subpart if it has at least one person in management position with three or more years of experience with a business enterprise.

a) The applicant shall include in its application an exhibit that identifies, by name and job title, the person(s) on its staff, and agents or contractors utilized pursuant to Section 451.140, with the managerial experience required under Subpart B. The exhibit shall provide a description of the re-

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levant occupational experience for each person, including the dates and locations of the experience being used to meet each experience requirement of this Section.

b) The applicant shall include in its application an exhibit containing a corporate organizational chart and indicate the position of the persons or agents who are being used to meet the requirements of this Section.

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Amended at 24 Ill. Reg. 15974, effective October 15, 2000

*83 Ill. Adm. Code 451.140 (2009)*

#### § 451.140 Qualifications of Agents and Contractors under Subpart B

An applicant may meet the requirements of Sections 451.120 and 451.130 by entering into one or more contracts with others to provide the required experience levels, provided that:

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a) Each agent and contractor on whom the applicant relies to meet Section 451.120 or 451.130 is disclosed in the application;

b) The applicant shall certify that the agent or contractor will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000

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83 Ill. Adm. Code 451.150 (2009)

§ 451.150 Commission Order in Proceedings under Subpart B

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The Commission shall issue an order granting or denying an application filed under this Subpart B within 45 days after the date on which a complete application has been filed with the Commission and notice of the application's filing is published in the Official State Newspaper as provided by the Notice by Publication Act [715 ILCS 5].

Amended at 24 Ill. Reg. 15974, effective October 15, 2000

SUBPART C. PROCEDURES FOR APPLICANTS SEEKING TO SERVE NONRESIDENTIAL RETAIL CUSTOMERS WITH ANNUAL ELECTRICAL CONSUMPTION GREATER THAN 15,000 kWh

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83 Ill. Adm. Code 451.160 (2009)¶  
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§ 451.160 Confidential Documentation (Repealed)¶  
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Repealed at 24 Ill. Reg. 15974, effective October 15, 2000¶

83 Ill. Adm. Code 451.200 (2009)

§ 451.200 Applicability of Subpart C

This Subpart shall apply to the certification of all alternative retail electric suppliers that seek to serve nonresidential retail customers with annual electrical consumption greater than 15,000 kWh. The requirements in this Subpart are in addition to the requirements of Subpart A. Sections 451.220 through 451.260 do not apply to electric cooperatives or municipal systems making an election under Section 17-300 of the Act [220 ILCS 5/17-300] to become an alternative retail electric supplier.

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SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

83 Ill. Adm. Code 451.210 (2009)

§ 451.210 General Qualifications under Subpart C

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Applicant shall certify compliance with all terms and conditions required by Section 16-115A(c) of the Act [220 ILCS 5/16-115A(c)].

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

83 Ill. Adm. Code 451.220 (2009)

§ 451.220 Financial Qualifications under Subpart C

a) An applicant shall be deemed to possess sufficient financial resources to be certified as an ARES able to serve only nonresidential retail customers with annual electrical consumption in excess of 15,000 kilowatt hours if it meets any of the following criteria:

1) The applicant maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, or F-2 or higher from Fitch Ratings or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor. The applicant shall provide with its application a copy of the ratings agency reports that present the ratings of the applicant.

2) The applicant maintains one or more lines of credit with Regional Transmission Organizations ("RTOs") and/or unaffiliated wholesale suppliers for electric energy for delivery to the service territories of the utilities for which the applicant is seeking a certificate.

A) The amount of credit available to the applicant under the credit agreement(s) shall be no less than the greater of \$ 750,000 or 7.5% of the amount of the applicant's revenue for its most recently completed 12-month fiscal year. That amount of revenue must appear in the applicant's certified fi- nancial statements, or those of the applicant's parent, that have received an accountant's report that certifies those financial statements to be free of material misstatement. If the applicant is using the certified financial statements of its parent, the minimum required amount of credit available under the credit agreement(s) shall be determined using the applicable revenue amount from the segment information section of the certified financial statements of the applicant's parent.

i) If the applicant is listed separately in the segment information section, the applicant's revenue shall be used.

ii) If the segment information section is broken down by operation, or other means, the revenue for the entire segment of which the applicant is part shall be used, unless a certified breakdown of the segment by company is provided.

C) The credit agreement(s) shall be valid for a period of not less than one year.

D) The applicant shall provide a copy of the following:

i) A schedule with references to each input of the calculation, showing the currently available amount of each line of credit, including all deductions resulting from any covenants or other limitations governing each agreement;

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ii) The credit agreement(s);

iii) The certified financial statements, including the accountant's report, of the applicant or those of the applicant's parent, as applicable;

iv) If the applicant's revenue from sales to Illinois retail customers is to be used, the applicant must submit certified financial statements that present this information, or internal documents that present this information and a verified statement from a company officer attesting to the accuracy of those internal documents;

v) A schedule showing the calculation of 5% of revenue with a reference to the applicant's certified financial statements or internal documents, as applicable, provided for the revenue input of the calculation.

3) The applicant demonstrates and certifies it is a member of one or more Regional Transmission Organizations ("RTOs") and purchases 100% of its physical electric energy from the RTOs for delivery to the service territories of the utilities for which the applicant is seeking a certificate.

4) The applicant certifies that it will offer to reimburse its Illinois retail customers for the additional costs those customers incur to acquire electric energy as a result of the applicant's failure to comply with a contractual obligation to supply such energy. Any resulting obligation of the applicant to reimburse Illinois retail customers shall be covered by an unconditional guarantee, payment bond, or letter of credit payable to the incumbent utility in favor of bundled rate customers to be credited through the applicable purchased power rider for each service territory the applicant serves. Any dollar limitation on the unconditional guarantee, payment bond, or letter of credit shall equal not less than the product of 1080 times the applicant's expected peak hourly demand expressed in megawatts over the next twelve months times the average of the 45 highest daily market prices of electric energy traded during the previous year. Each January, the Commission shall choose a published price index for electricity for use in this subsection (a)(3). The daily market price of electric energy shall equal the published price index for electricity traded in Illinois, except in the event that no price index for electricity traded in the State of Illinois is published, then the daily market price of electricity shall be determined by the use of a published price index for electricity traded at the nearest location to the State of Illinois. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one year.

A) Unconditional Guarantee. The guarantor shall maintain at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, or F-2 or higher from Fitch Ratings or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor. The applicant shall provide a copy of the following:

i) The unconditional guarantee;

ii) The ratings agency report(s) that present the ratings of the guarantor; and

iii) A good faith estimate of the applicant's expected peak hourly demand expressed in MW's over the next twelve months.

B) Payment Bond. The payment bond or payment bonds shall be issued by a qualifying surety authorized to transact business in the State of Illinois or by a surety whose Best's rating is A- or better, whose Best's financial size category is VII or larger, and whose contract of insurance is issued

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A) The guarantee, payment bond, or letter of credit shall be in an amount that is no less than the greater of \$ 750,000 or 7.5% of the amount of the applicant's revenue from the sale of electric energy for the most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financ...

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pursuant to Section 445 or 445a of the Illinois Insurance Code and countersigned by the Surplus Line Association of Illinois or its successor. The applicant shall provide a copy of the following:

i) The payment bond(s) or the contract of insurance with the countersignature of the Surplus Line Association of Illinois or its successor as applicable;

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ii) Documentation demonstrating that the surety issuing the payment bond is a qualified surety authorized to transact business in the State of Illinois or a surety with a satisfactory Best's rating, as applicable; and

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iii) A good faith estimate of the applicant's expected peak hourly demand expressed in MWs over the next twelve months.

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C) Letter of Credit. The letter of credit shall be irrevocable and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, or A- or higher from Fitch Ratings or its successor. The applicant shall provide a copy of the following:

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i) The letter of credit;

ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit; and

iii) A good faith estimate of the applicant's expected peak hourly demand expressed in MWs over the next twelve months.

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5) The applicant maintains a line of credit or revolving credit agreement.

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A) The line of credit or revolving credit agreement must be from a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, or A- or higher from Fitch Ratings or its successor.

B) The amount of the line of credit or revolving credit agreement shall be no less than the greater of \$ 750,000 or 7.5% of the amount of the applicant's revenue for the most recently completed 12-month fiscal year. That amount of revenue must appear in the applicant's certified financial statements, or those of the applicant's parent, that have received an accountant's report that certifies those financial statements to be free of material misstatement. If the applicant is using the certified financial statements of its parent, the minimum required amount of credit available under the line of credit or revolving credit agreement shall be determined using the applicable revenue amount from the segment information section of the certified financial statements of the applicant's parent.

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i) If the applicant is listed separately in the segment information section, the applicant's revenue shall be used.

ii) If the segment information section is broken down by operation, or other means, the revenue for the entire segment of which the applicant is part shall be used, unless a certified breakdown of the segment by company is provided.

C) The line of credit or revolving credit agreement shall be valid for a period of not less than one year.

D) The applicant shall provide a copy of the following:

i) The line of credit or revolving credit agreement;

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ii) The ratings agency report that presents the long- term obligation rating of the financial institution extending the credit;

iii) The certified financial statements, including the accountant's report, of the applicant or those of the applicant's parent, as applicable; and

iv) A schedule showing the 7.5% of revenue calculation, with a reference to the applicant's certified financial statements provided for the revenue input of the calculation.

b) An applicant that does not either meet or qualify for certification under any of the criteria set forth in subsection (a) shall describe its financial resources and explain why those financial resources are sufficient for the goods and services it seeks to provide. If the applicant's financial resources are not sufficient for the services it seeks to provide or if the financial documents do not otherwise establish that the applicant possesses adequate financial resources to provide the service for which it seeks a certificate of service authority, the Commission shall deny granting that certificate of service authority. In its application, the applicant shall provide the following:

1) An explanation of how its supporting documentation demonstrates that its financial resources are sufficient for the goods and services it seeks to provide; and

2) The applicant's certified financial statements, or those of its parent if the segment information contained in the parent's financial statements is sufficiently detailed to establish the adequacy of the applicant's financial resources, and accountant's report. If the applicant does not have certified financial statements and an accountant's report, the applicant shall provide all of the following:

A) A balance sheet that reflects the applicant's current financial condition and includes a statement of assets, liabilities and owner's equity;

B) An income statement that reflects the applicant's current earnings. If the applicant has not yet started operations, it shall provide a projected income statement;

C) A listing of shareholders, owners, partners or proprietors with ownership interests in excess of 5% and the amount of their respective ownership interests;

D) A listing of any entities with which the applicant expects to enter into a contract within the next 12 months concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;

E) Copies of all contracts with outside contractors and with all affiliated entities concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;

F) A projected budget for the next three fiscal years following the current year; and

G) If available:

i) Unaudited financial statements (for the most recent period available) including any compilation or review opinions;

ii) The most recent federal and state income tax return;

iii) General ledgers for the most recent 12 month period available; and

iv) The applicant's Dun & Bradstreet Business Information Report.

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A) Financial Ratios¶

i) Pre-Tax Interest Coverage (rounded to the nearest 0.1)¶

4.4 or above: 5 points¶

3.9 to 4.3: 4 points¶

3.4 to 3.8: 3 points¶

2.9 to 3.3: 2 points¶

2.4 to 2.8: 1 point¶

2.3 or below: 0 points¶

ii) Funds from Operations Interest Coverage (rounded to the nearest 0.1)¶

4.9 or above: 5 points¶

4.4 to 4.8: 4 points¶

3.9 to 4.3: 3 points¶

3.4 to 3.8: 2 points¶

2.9 to 3.3: 1 point¶

2.8 or below: 0 points¶

iii) Funds from Operations to Total Debt (rounded to the nearest 1%)¶

38% or above: 5 points¶

33% to 37%: 4 points¶

28% to 32%: 3 points¶

23% to 27%: 2 points¶

18% to 22%: 1 point¶

17% or below: 0 points¶

iv) Total Debt to Total Capitalization (rounded to the nearest 1%)¶

50% or below: 5 points¶

51% to 53%: 4 points¶

54% to 56%: 3 points¶

57% to 59%: 2 points¶

60% to 62%: 1 point¶

63% or above: 0 points¶

B) The applicant shall provide the following:¶

i) The applicant's certified financial statements for its most recently completed fiscal year:¶

ii) The accountant's report for the applicant's certified financial statements; and¶

iii) A schedule showing the calculation of each financial ratio with a reference to the applicant's certified financial statements provided for each input of the calculation.¶

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c) An applicant that will provide electric power and energy with property, plant, and equipment that it owns, controls, or operates shall have in force, and provide proof that it has in force, general liability insurance that shall remain in effect for a period of not less than one year.

1) The applicant shall be deemed to have sufficient commercial general liability insurance if that coverage is in the amount of at least \$ 100,000,000. The commercial general liability insurance must be maintained with insurance companies assigned Best's ratings of A- or better and Best's financial sizes of VII or larger.

2) The applicant shall provide a certificate of insurance as part of its application for certification. If the applicant or ARES renews or makes changes in its insurance coverage, the insurance coverage must be continuous and without interruption. The certificate of insurance and the insurance policies shall contain a provision that coverage afforded under the policies shall not be cancelled, allowed to expire, or subjected to a reduction in the limits in any manner unless at least 30 days prior written notice (10 days notice in the case of nonpayment of premium) has been given to the Commission.

3) Applicants having commercial general liability insurance coverage in an amount that is less than \$ 100,000,000 shall explain why that insurance is sufficient for the coverage of losses caused by any act or omission of the applicants or of their employees, contractors, or other agents, in the conduct of the applicants' business. If the applicant's insurance coverage is deemed insufficient or if the documents it supplies do not otherwise establish that the applicant possesses adequate insurance coverage, the Commission shall deny granting a certificate of service authority. With its explanation, the applicant shall describe the factors it considered in establishing the amount of its commercial general liability insurance coverage. In addition, the applicant shall describe the age, capacity, and fuel of the electric power production plant and the amount of its annual revenues and assets and number of employees.

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000.

Amended at 26 Ill. Reg. 7039, effective May 1, 2002.

Expedited Correction at 26 Ill. Reg. 15115, effective May 1, 2002.

83 Ill. Adm. Code 451.230 (2009)

§ 451.230 Technical Qualifications under Subpart C

a) An applicant that uses electric generation, transmission or distribution facilities that it owns, controls, or operates in serving customers shall be deemed to possess sufficient technical capabilities to serve retail customers identified in this Subpart if it maintains a technical staff on duty or on call 24 hours each day to operate and maintain applicant's facilities as needed, and meets the criteria in subsections (b) and (c) of this Section.

b) An applicant shall be deemed to possess sufficient technical capabilities to serve retail customers identified in this Subpart if it has individuals on its staff with two years experience buying and selling power and energy in wholesale markets, and six months of experience working for an

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entity that is either a member of PJM, a market participant in the Midwest ISO, or has a system operator certificate from NERC, or has earned Certified Energy Procurement Professional status by the Association of Energy Engineers or equivalent certification, and provides, or has arranged to provide, the following:

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**Deleted:** two years electric system operational experience, three months experience with OASIS reservation processes, three months experience with NERC or its successor tagging processes, and one years experience working with rules and practices established by NERC and MAIN and/or MAPP or their successors

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1) A scheduling facility with 24-hour staffed operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation; and

2) The applicant shall designate in its application, and shall agree thereafter to maintain, a telephone number, fax number, and address where its staff can be directly reached at all times. Maintenance of an answering service or machine, pager, or similar message-taking procedure does not satisfy this requirement.

c) The applicant shall include in its application an exhibit that identifies, by name and job title, the person(s) on its staff, and agents or contractors utilized pursuant to Section 451.250, with the technical experience required under Subpart C. The exhibit shall provide a description of the relevant occupational experience for each person, including the dates and locations of the experience being used to meet each experience requirement of this Section.

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d) In the event the applicant does not meet length of experience qualifications set forth in this Section, the applicant shall demonstrate the extent its technical resources and abilities match the services that it intends to provide to its customers. The Commission may impose such terms and conditions as deemed necessary in order to insure the applicant is technically qualified, commensurate with the anticipated scope of the service to be provided and customers to be served.

Added at 23 Ill. Reg. 13820, effective December 1, 1999.  
Amended at 24 Ill. Reg. 15974, effective October 15, 2000

### 83 Ill. Adm. Code 451.240 (2009)

#### § 451.240 Managerial Qualifications under Subpart C

An applicant shall be deemed to possess sufficient managerial capabilities to serve customers identified in this Subpart if it has at least one person in a management position with four or more years experience with enterprise financial and administration responsibilities including profit and loss responsibilities and provides the information required in subsections (a) and (b) of this Section.

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a) The applicant shall include in its application an exhibit that identifies, by name and job title, the person(s) on its staff, and agents or contractors utilized pursuant to Section 451.250, with the managerial experience required under Subpart C. The exhibit shall provide a description of the relevant occupational experience for each person, including the dates and locations of the experience being used to meet each experience requirement of this Section. b) The applicant shall include in its application an exhibit containing a corporate organizational chart and indicating the position of the persons or agents who are being used to meet the requirements of this Section.

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c) In the event the applicant does not meet the managerial qualifications set forth in this Section, the applicant shall demonstrate the extent its managerial resources and abilities match the services

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that it intends to provide to its customers. The Commission may impose such terms and conditions as deemed necessary in order to insure the applicant is managerially qualified, commensurate with the anticipated scope of the service to be provided and customers to be served.

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

*83 Ill. Adm. Code 451.250 (2009)*

§ 451.250 Qualifications of Agents and Contractors under Subpart C

An applicant may meet the requirements of Sections 451.230 and 451.240 by entering into one or more contracts with others to provide the required experience levels, provided that:

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a) Each agent and contractor on whom the applicant relies to meet Section 451.230 or 451.240 is disclosed in the application; and

b) The applicant shall certify that the agent or contractor will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

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*83 Ill. Adm. Code 451.260 (2009)*

§ 451.260 Commission Order in Proceedings under Subpart C

The Commission shall issue an order granting or denying an application filed under this Subpart C within 45 days after the date on which a complete application has been properly filed with the Commission and notice of the application's filing is published in the Official State Newspaper as provided by the Notice by Publication Act [715 ILCS 5].

Added at 23 Ill. Reg. 13820, effective December 1, 1999.  
Amended at 24 Ill. Reg. 15974, effective October 15, 2000

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83 Ill. Adm. Code 451.270 (2009)¶  
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§ 451.270 Confidential Documentation under Subpart C (Repealed)¶  
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Added at 23 Ill. Reg. 13820, effective December 1, 1999.¶  
Repealed at 24 Ill. Reg. 15974, effective October 15, 2000¶  
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SUBPART D. PROCEDURES FOR APPLICANTS SEEKING TO SERVE ALL RETAIL CUSTOMERS

*83 Ill. Adm. Code 451.300 (2009)*

§ 451.300 Applicability of Subpart D

Subpart D shall apply to applicants who seek to serve all retail customers. The requirements of this Subpart are in addition to the requirements of Subpart A. Sections 451.320 through 451.360 do not apply to electric cooperatives or municipal systems making an election under Section 17-300 of the Act [220 ILCS 5/17-300] to become an alternative retail electric supplier.

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.  
Amended at 26 Ill. Reg. 7039, effective May 1, 2002.



83 Ill. Adm. Code 451.310 (2009)

§ 451.310 General Provisions of Subpart D

a) Applicant shall certify compliance with all terms and conditions required by Section 16-115A(c) of the Act [220 ILCS 5/16-115A(c)].

b) An applicant that seeks to serve customers within a geographic area that is smaller than an electric utility's service area shall demonstrate that the designation of this smaller area does not violate any part of Section 16-115A of the Act [220 ILCS 5/16-115A]. Applicant shall state in its application for certification any limitations that will be imposed on the number of customers or maximum load to be served and certify that it will not deny service to a customer or group of customers nor establish any differences as to prices, terms, conditions, services, products, facilities, or in any other respect, whereby such denial or differences are based upon race, gender, or income nor deny service to a customer or group of customers based on locality nor establish any unreasonable difference as to prices, terms, conditions, services, products, or facilities as between localities.

c) The applicant shall certify that it will comply with the following requirements with respect to the marketing, offering, and provision of products or services to residential and small commercial retail customers:

1) Any marketing materials that make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms, and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer.

2) Before any customer is switched from another supplier, the alternative retail electric supplier shall give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer.

3) An alternative retail electric supplier shall provide documentation to the Commission and to customers that substantiates any claims made by the alternative retail electric supplier regarding the technologies and fuel types used to generate the electricity offered or sold to customers.

4) The alternative retail electric supplier shall provide to the customer itemized billing statements that describe the products and services provided to the customer and their prices, and provide an additional statement, at least annually, that adequately discloses the average monthly prices, and the terms and conditions of the products and services sold to the customer.

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d) The applicant shall certify that it will include materials comprising the consumer education program (pursuant to Section 16-117 of the Act [220 ILCS 5/16-117]) with all initial mailings to potential residential and small commercial retail customers and before executing any agreements or contracts with such customers.

e) The applicant shall certify that it will provide consumer education program materials (pursuant to Section 16-117 of the Act [220 ILCS 5/16-117]) at no charge to residential and small commercial retail customers upon request.

f) The applicant shall certify that it will provide to residential and small commercial retail customers on a semiannual basis information on how to obtain a list of alternative retail electric suppli-

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ers that have been found in the last 3 years by the Commission (pursuant to Section 10-108 of the Act [220 ILCS 5/10-108]) to have failed to provide service in accordance with the terms of their contracts (pursuant to Section 16-117(g)(4)(C) of the Act).

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

Amended at 26 Ill. Reg. 7039, effective May 1, 2002.

83 Ill. Adm. Code 451.320 (2009)

§ 451.320 Financial Qualifications under Subpart D

a) An applicant shall be deemed to possess sufficient financial resources to be certified as an ARES able to serve all retail customers if it meets any of the following criteria:

1) The applicant maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, or F-2 or higher from Fitch Ratings or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor. The applicant shall provide with its application a copy of the ratings agency reports that present the ratings of the applicant.

2) The applicant maintains one or more lines of credit with Regional Transmission Organizations ("RTOs") and/or unaffiliated wholesale suppliers for electric energy for delivery to the service territories of the utilities for which the applicant is seeking a certificate.

A) The amount of credit available to the applicant under the credit agreement(s) shall in aggregate be no less than the greater of \$ 1,000,000 or 10% of the amount of the applicant's revenue for its most recently completed 12-month fiscal year. That amount of revenue must appear in the applicant's certified financial statements, or those of the applicant's parent, that have received an accountant's report that certifies those financial statements to be free of material misstatement. If the applicant is using the certified financial statements of its parent, the minimum required amount of credit available under the credit agreement(s) shall be determined using the applicable revenue amount from the segment information section of the certified financial statements of the applicant's parent.

i) If the applicant is listed separately in the segment information section, the applicant's revenue shall be used.

ii) If the segment information section is broken down by operation, or other means, the revenue for the entire segment of which the applicant is part shall be used, unless a certified breakdown of the segment by company is provided.

In the alternative, the applicant's revenue from sales to Illinois retail customers may be used; in such circumstances, the revenue from sales to Illinois retail customers must be provided in the certified financial statements or in internal documents accompanied by a verified statement from a company officer.

B) The credit agreement(s) shall be valid for a period of not less than one year.

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83 Ill. Adm. Code 451.320

C) The applicant shall provide a copy of the following:

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i) A schedule, with references to each input of the calculation, showing the currently available amount of each line of credit, including all deductions resulting from any covenants or other limitations governing each agreement;

Deleted: The ratings agency reports that present the ratings of the affiliate with which the applicant maintains the borrowing agreement;

ii) The credit agreement(s);

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iii) The certified financial statements, including the accountant's report, of the applicant or those of the applicant's parent, as applicable;

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iv) If the applicant's revenue from sales to Illinois retail customers is to be used, the applicant must submit certified financial statements that present this information, or internal documents that present this information and a verified statement from a company officer attesting to the accuracy of those internal documents; and

Deleted: The accountant's report for the applicant's certified financial statements or those of the applicant's parent, as applicable.

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v) A schedule showing the calculation of 5% of revenue with a reference to the applicant's certified financial statements or internal documents, as applicable, provided for the revenue input of the calculation.

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3) The applicant demonstrates and certifies it is a member of one or more Regional Transmission Organizations ("RTOs") and purchases 100% of its physical electric energy from the RTOs for delivery to the service territories of the utilities for which the applicant is seeking a certificate.

Deleted: The obligations of the applicant to unaffiliated companies arising from the acquisition of electric energy that can be delivered to retail customers in the State of Illinois, for sale or lease or in exchange for other value received, are covered under a guarantee, payment bond, or letter of credit.¶ ...

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4) The applicant certifies that it will offer to reimburse its Illinois retail customers for the additional costs those customers incur to acquire electric energy as a result of the applicant's failure to comply with a contractual obligation to supply such energy. Any resulting obligation of the applicant to reimburse Illinois retail customers shall be covered by an unconditional guarantee, payment bond, or letter of credit payable to the incumbent utility in favor of bundled rate customers to be credited through the applicable purchased power rider for each service territory the applicant serves. Any dollar limitation on the unconditional guarantee, payment bond, or letter of credit shall equal not less than the product of 1080 times the applicant's expected peak hourly demand expressed in MWs over the next twelve months times the average of the 45 highest daily market prices of electric energy traded during the previous year. Each January, the Commission shall choose a published price index for electricity for use in this subsection (a)(3). The daily market price of electric energy shall equal the published price index for electricity traded in Illinois, except in the event that no price index for electricity traded in the State of Illinois is published, then the daily market price of electricity shall be determined by the use of a published price index for electricity traded at the nearest location to the State of Illinois. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one year.

A) Unconditional Guarantee. The guarantor shall maintain at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, or F-2 or higher from Fitch Ratings or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor. The applicant shall provide a copy of the following:

i) The unconditional guarantee;

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83 Ill. Adm. Code 451.320

ii) The rating s agency report(s) that ratings of the guarantor; and

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iii) A good faith estimate of the applicant's expected peak hourly demand expressed in MWs over the next twelve months.

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B) Payment Bond. The payment bond or payment bonds shall be issued by a qualifying surety authorized to transact business in the State of Illinois or by a surety whose Best's rating is A- or better, whose Best's financial size category is VII or larger, and whose contract of insurance is issued pursuant to Section 445 or 445a of the Illinois Insurance Code and countersigned by the Surplus Line Association of Illinois or its successor. The applicant shall provide a copy of the following:

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i) The payment bonds or the contract of insurance with the countersignature of the Surplus Line Association of Illinois or its successor as applicable;

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ii) Documentation demonstrating that the surety issuing the payment bond is a qualified surety authorized to transact business in the State of Illinois or a surety with a satisfactory Best's rating, as applicable; and

iii) A good faith estimate of the applicant's expected peak amount of MW the applicant will schedule during the remainder of the current calendar year.

C) Letter of Credit. The letter of credit shall be irrevocable and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, or A- or higher from Fitch Ratings or its successor. The applicant shall provide a copy of the following:

i) The letter of credit;

ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit; and

iii) A good faith estimate of the applicant's expected peak hourly demand expressed in MWs over the next twelve months.

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5) The applicant maintains a line of credit or revolving credit agreement.

A) The line of credit or revolving credit agreement must be from a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, or A- or higher from Fitch Ratings or its successor.

B) The amount of the line of credit or revolving credit agreement shall be no less than the greater of \$ 1,000,000 or 10% of the amount of the applicant's revenue for the most recently completed 12-month fiscal year. That amount of revenue must appear in the applicant's certified financial statements, or those of the applicant's parent, that have received an accountant's report that certifies those financial statements to be free of material misstatement. If the applicant is using the certified financial statements of its parent, the minimum required amount of credit available under the line of credit or revolving credit agreement shall be determined using the applicable revenue amount from the segment information section of the certified financial statements of the applicant's parent.

**Deleted:** borrowing agreement

i) If the applicant is listed separately in the segment information section, the applicant's revenue shall be used.

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83 Ill. Adm. Code 451.320

ii) If the segment information section is broken down by operation, or other means, the revenue for the entire segment of which the applicant is part shall be used, unless a certified breakdown of the segment by company is provided.

C) The line of credit or revolving credit agreement shall be valid for a period of not less than one year.

D) The applicant shall provide a copy of the following:

i) The line of credit or revolving credit agreement;

ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit;

iii) The certified financial statements, including the accountant's report, of the applicant or those of the applicant's parent, as applicable; and

iv) A schedule showing the 10% of revenue calculation, with a reference to the applicant's certified financial statements provided for the revenue input of the calculation. The accountant's report for the applicant's certified financial statements or those of the applicant's parent, as applicable.

b) An applicant that does not either meet or qualify for certification under any of the criteria set forth in subsection (a) shall describe its financial resources and explain why those financial resources are sufficient for the goods and services it seeks to provide. If the applicant's financial resources are not sufficient for the services it seeks to provide or if the financial documents do not otherwise establish that the applicant possesses adequate financial resources to provide the service for which it seeks a certificate of service authority, the Commission shall deny granting that certificate of service authority. In its application, the applicant shall provide the following:

1) An explanation of how its supporting documentation demonstrates that its financial resources are sufficient for the goods and services it seeks to provide; and

2) The applicant's certified financial statements, or those of its parent if the segment information contained in the parent's financial statements is sufficiently detailed to establish the adequacy of the applicant's financial resources, and accountant's report. If the applicant does not have certified financial statements and an accountant's report, the applicant shall provide all of the following:

A) A balance sheet that reflects the applicant's current financial condition and includes a statement of assets, liabilities and owner's equity;

B) An income statement that reflects the applicant's current earnings. If the applicant has not yet started operations, it shall provide a projected income statement;

C) A listing of shareholders, owners, partners or proprietors with ownership interests in excess of 5% and the amount of their respective ownership interests;

D) A listing of any entities with which the applicant expects to enter into a contract within the next 12 months concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;

E) Copies of all contracts with outside contractors and with all affiliated entities concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;

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**Deleted:** 6) The applicant earns 12 points on the financial ratios set forth in subsection (a)(6)(A);¶  
A) Financial Ratios¶

¶ i) Pre-Tax Interest Coverage (rounded to the nearest 0.1)¶

¶ 4.9 or above: 5 points¶  
4.4 to 4.8: 4 points¶  
3.9 to 4.3: 3 points¶  
3.4 to 3.8: 2 points¶  
2.9 to 3.3: 1 point¶  
2.8 or below: 0 points¶

¶ ii) Funds from Operations Interest Coverage (rounded to the nearest 0.1)¶

¶ 5.4 or above: 5 points¶  
4.9 to 5.3: 4 points¶  
4.4 to 4.8: 3 points¶  
3.9 to 4.3: 2 points¶  
3.4 to 3.8: 1 point¶  
3.3 or below: 0 points¶

¶ iii) Funds from Operations to Total Debt (rounded to the nearest 1%)¶  
45% or above: 5 points¶  
40% to 44%: 4 points¶  
35% to 39%: 3 points¶  
30% to 34%: 2 points¶  
25% to 29%: 1 point¶  
24% or below: 0 points¶

¶ iv) Total Debt to Total Capitalization (rounded to the nearest 1%)¶

¶ 41% or below: 5 points¶  
42% to 44%: 4 points¶  
45% to 47%: 3 points¶  
48% to 50%: 2 points¶  
51% to 53%: 1 point¶  
54% or above: 0 points¶

B) The applicant shall provide the following:¶ ...

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F) A projected budget for the next three fiscal years following the current year; and

G) If available:

i) Unaudited financial statements (for the most recent period available) including any compilation or review opinions;

ii) The most recent federal and state income tax return;

iii) General ledgers for the most recent 12 month period available; and

iv) The applicant's Dun & Bradstreet Business Information Report.

c) An applicant that will provide electric power and energy with property, plant, and equipment that it owns, controls, or operates shall have in force, and provide proof that it has in force, general liability insurance that shall remain in effect for a period of not less than one year.

1) The applicant shall be deemed to have sufficient commercial general liability insurance if that coverage is in the amount of at least \$ 100,000,000. The commercial general liability insurance must be maintained with insurance companies assigned Best's ratings of A- or better and Best's financial sizes of VII or larger.

2) The applicant shall provide a certificate of insurance as part of its application for certification. If the applicant or ARES renews or makes changes in its insurance coverage, the insurance coverage must be continuous and without interruption. The certificate of insurance and the insurance policies shall contain a provision that coverage afforded under the policies shall not be cancelled, allowed to expire, or subjected to a reduction in the limits in any manner unless at least 30 days prior written notice (10 days notice in the case of nonpayment of premium) has been given to the Commission.

3) Applicants having commercial general liability insurance coverage in an amount that is less than \$ 100,000,000 shall explain why that insurance is sufficient for the coverage of losses caused by any act or omission of the applicants or of their employees, contractors, or other agents, in the conduct of the applicants' business. If the applicant's insurance coverage is deemed insufficient or if the documents it supplies do not otherwise establish that the applicant possesses adequate insurance coverage, the Commission shall deny granting a certificate of service authority. With its explanation, the applicant shall describe the factors it considered in establishing the amount of its commercial general liability insurance coverage. In addition, the applicant shall describe the age, capacity, and fuel of electric power production plant and the amount of its annual revenues and assets and number of employees.

**SOURCE:**

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000.

Amended at 26 Ill. Reg. 7039, effective May 1, 2002.

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83 Ill. Adm. Code 451.330 (2009)

§ 451.330 Technical Qualifications under Subpart D

a) An applicant that uses electric generation, transmission or distribution facilities that it owns, controls, or operates in serving customers shall be deemed to possess sufficient technical capabilities to serve retail customers identified in this Subpart if it maintains a technical staff on duty or on call 24 hours each day to operate and maintain applicant's facilities as needed, and meets the criteria in subsections (b) and (c) of this Section.

b) An applicant shall be deemed to possess sufficient technical capabilities to serve retail customers identified in this Subpart if it has individuals on its staff with four years experience buying and selling power and energy in wholesale markets, and one year of experience working for an entity that is either a member of PJM, a market participant in the Midwest ISO, or has a system operator certificate from NERC, or has earned Certified Energy Procurement Professional status by the Association of Energy Engineers or equivalent certification, and provides, or has arranged to provide, the following:

1) A scheduling facility with 24 hour staffed operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation; and

2) The applicant shall designate in its application, and shall agree thereafter to maintain, a telephone number, fax number, and address where its staff can be directly reached at all times. Maintenance of an answering service or machine, pager, or similar message-taking procedure does not satisfy this requirement.

c) The applicant shall include in its application an exhibit that identifies, by name and job title, the person(s) on its staff, and agents or contractors utilized pursuant to Section 451.350, with the technical experience required under Subpart D. The exhibit shall provide a description of the relevant occupational experience for each person, including the dates and locations of the experience being used to meet each experience requirement of this Section.

d) In the event the applicant does not meet length of experience qualifications set forth in this Section, the applicant shall demonstrate the extent its technical resources and abilities match the services that it intends to provide to its customers. The Commission may impose such terms and conditions as deemed necessary in order to insure the applicant is technically qualified, commensurate with the anticipated scope of the service to be provided and customers to be served.

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SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

83 Ill. Adm. Code 451.340 (2009)

§ 451.340 Managerial Qualifications under Subpart D



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An applicant shall be deemed to possess sufficient managerial capabilities to serve retail customers identified in this Subpart if it has three or more individuals in management positions with four or more years experience with enterprise financial and administration responsibilities including profit and loss responsibilities, four years experience buying and selling power and energy in wholesale markets, and four years electric system operational experience and provides the information required in subsections (a) and (b) of this Section.

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a) The applicant shall include in its application an exhibit that identifies, by name and job title, the person(s) on its staff, and agents or contractors utilized pursuant to Section 451.350, with the managerial experience required under Subpart D. The exhibit shall provide a description of the relevant occupational experience for each person, including the dates and locations of the experience being used to meet each experience requirement of this Section. b) The applicant shall include in its application an exhibit containing a corporate organizational chart and indicating the position of the persons or agents who are being used to meet the requirements of this Section.

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c) In the event the applicant does not meet the managerial qualifications set forth in this Section, the applicant shall demonstrate the extent its managerial resources and abilities match the services that it intends to provide to its customers. The Commission may impose such terms and conditions as deemed necessary in order to insure the applicant is managerially qualified, commensurate with the anticipated scope of the service to be provided and customers to be served.

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

*83 Ill. Adm. Code 451.350 (2009)*

§ 451.350 Qualifications of Agents and Contractors under Subpart D

An applicant may meet the requirements of Sections 451.330 and 451.340 by entering into one or more contracts with others to provide the required experience levels, provided that:

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a) Each agent and contractor on whom the applicant relies to meet Section 451.330 or 451.340 is disclosed in the application;

b) The applicant shall certify that the agent or contractor will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

*83 Ill. Adm. Code 451.360 (2009)*

§ 451.360 Commission Order in Proceedings under Subpart D

The Commission shall issue an order granting or denying an application filed under this Subpart D within 45 days after the date on which a complete application has been filed with the Commission



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and notice of the application's filing is published in the Official State Newspaper as provided by the Notice by Publication Act [715 ILCS 5], provided that the Commission can extend the time for considering an application filed under this Subpart D by up to 90 days, and can schedule a hearing on such an application. The Commission shall extend the time for considering an application and schedule a hearing if:

- a) The applicant has proposed limitations on the number of customers or the amount of load to be served;
- b) A party to the application proceeding has formally requested that the Commission hold hearings in a pleading that contains a verified prima facie showing that one or more of the allegations or certifications in the application is false or misleading; or
- c) Other facts or circumstances exist that will necessitate additional time or evidence in order to determine whether a certificate should be issued.

Added at 23 Ill. Reg. 13820, effective December 1, 1999.  
Amended at 24 Ill. Reg. 15974, effective October 15, 2000

#### SUBPART E. PROCEDURES FOR APPLICANTS SEEKING CERTIFICATION TO SERVE ONLY THEMSELVES OR AFFILIATED CUSTOMERS

*83 Ill. Adm. Code 451.400 (2009)*

##### § 451.400 Applicability of Subpart E

This Subpart shall apply to a retail customer that seeks certification as an ARES only to provide electric power and energy exclusively to itself (i.e. the applicant), and to subsidiaries or other corporate affiliates of the applicant that are at separate locations. This includes, but is not limited to, applicants seeking certification pursuant to Section 16-115(e) of the Act.

SOURCE:  
Added at 23 Ill. Reg. 13820, effective December 1, 1999.

*83 Ill. Adm. Code 451.410 (2009)*

##### § 451.410 Required Filings and Procedures under Subpart E

a) The applicant shall publish, as provided by the Notice of Publication Act [715 ILCS 5], notice of its application for certification in the Official State Newspaper within 10 days following the filing of the application for certification. The applicant shall file proof of publication with the Clerk of the Commission within 5 days following publication.

b) All applications for certification under this Part shall be verified as required by Section 200.130 of the Commission's "Rules of Practice" (*83 Ill. Adm. Code 200.130*).

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*83 Ill. Adm. Code 451.370 (2009)*¶  
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§ 451.370 Confidential Documentation under Subpart D (Repealed)¶  
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Added at 23 Ill. Reg. 13820, effective December 1, 1999.¶  
Repealed at 24 Ill. Reg. 15974, effective October 15, 2000.¶  
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c) The applicant shall provide the following:

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1) Applicant's name, street address and phone number.

2) Description and location of cogeneration or self-generation facilities within the State of Illinois that applicant owns, if any.

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3) Description(s) and location(s) of retail customers to be serviced by applicant and shall provide:

A) Description of relationship between applicant and retail customers; and

B) Verification that the retail customers are eligible for delivery service.

d) The applicant shall verify that it has entered into an agreement with the relevant electric utilities pursuant to Section 16-118.

e) The applicant shall comply with the requirements of Section 451.20(a).

f) Contents of documents shall be consistent with Subpart B of the Commission's "Rules of Practice" (83 Ill. Adm. Code 200: Subpart B).

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

83 Ill. Adm. Code 451.420 (2009)

§ 451.420 Technical Qualifications under Subpart E

a) Applicant shall be deemed to possess sufficient technical capabilities to serve nonresidential retail customers under this Subpart if it maintains a technical staff on duty or on call 24 hours each day to operate and maintain applicant's facilities as needed.

b) Applicant provides, or has arranged to provide, a scheduling facility with 24 hour staffed operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

c) The applicant shall designate in its application, and shall agree thereafter to maintain, a telephone number, fax number, and address where its staff can be directly reached at all times. Maintenance of an answering service or machine, pager, or similar message-taking procedure does not satisfy this requirement.

d) The applicant shall include in its application an exhibit that identifies, by name and job title, the person(s) on its staff, and agents or contractors utilized pursuant to Section 451.430, with the technical experience required under Subpart E. The exhibit shall provide a description of the relevant occupational experience for each person, including the dates and locations of the experience being used to meet each experience requirement of this Section.

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SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

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*83 Ill. Adm. Code 451.430 (2009)*

§ 451.430 Qualifications of Agents and Contractors under Subpart E

An applicant may meet the requirements of Section 451.420 by entering into one or more contracts with others to provide the required experience levels, provided that:

a) Each agent and contractor on whom the applicant relies to meet Section 451.420 is disclosed in the application; and

b) The applicant shall certify that the agent or contractor will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

SOURCE:

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

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*83 Ill. Adm. Code 451.440 (2009)*

§ 451.440 Commission Order in Proceedings under Subpart E

The Commission shall issue an order granting or denying an application filed under this Subpart E within 45 days after the date on which a complete application has been properly filed with the Commission and notice of the application's filing is published in the Official State Newspaper as provided by the Notice by Publication Act [715 ILCS 5].

Added at 23 Ill. Reg. 13820, effective December 1, 1999.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000.

SUBPART F. FINANCIAL QUALIFICATIONS FOR THE PROVISION OF SINGLE-BILLING SERVICE

*83 Ill. Adm. Code 451.500 (2009)*

§ 451.500 Applicability of Subpart F

The requirements of this Subpart are in addition to the requirements of Subpart A. This Subpart does not apply to electric cooperatives or municipal systems making an election under Section 17-300 of the Act to become an alternative retail electric supplier.

Amended at 24 Ill. Reg. 15974, effective October 15, 2000

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83 Ill. Adm. Code 451.450 (2009)¶  
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§ 451.450 Confidential Documentation under Subpart E (Repealed)¶  
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Added at 23 Ill. Reg. 13820, effective December 1, 1999.¶  
Repealed at 24 Ill. Reg. 15974, effective October 15, 2000¶  
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83 Ill. Adm. Code 451.510 (2009)

§ 451.510 Financial Qualifications under Subpart F

An applicant may request authorization from the Commission to provide single billing services at the time it seeks certification as an ARES or at any time thereafter. However, under no circumstances may an ARES provide single billing services without authorization from the Commission. An applicant that seeks to provide single billing services shall demonstrate an ability to establish and maintain sufficient financial resources to satisfy the obligation to remit to utilities monies that the ARES collects under single billing tariffs adopted pursuant to Section 16-118(b) of the Act [220 ILCS 5/16-118(b)]. The applicant for single billing services may demonstrate this credit worthiness in one of four ways:

a) The applicant may undertake to post and maintain a bond or bonds issued by a qualifying surety or financial institution chartered by the United States or the State of Illinois in favor of any Illinois utility in whose service territory the applicant will serve retail customers. The bond or bonds shall be in an amount equal to 15% of a good faith estimate of the total amount that the applicant expects to be obliged to pay to the utility under single billing tariffs adopted pursuant to Section 16-118(b) of the Act during the next twelve months. The applicant shall provide a copy of the bonding agreement(s) and the bond(s) to the Commission with the application to provide single billing service. The bond(s) shall be conditioned on the full and timely payment of all amounts due to the utility in accordance with the terms specified in the single billing tariffs and shall be valid for a period of not less than one year.

b) The applicant may deliver an irrevocable letter of credit issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, or A- or higher from Fitch Ratings or its successor in the same amount and in favor of the same parties as the bond that would otherwise be required. The letter of credit shall provide that a draft will be honored in accordance with the terms specified in the single billing tariffs. The letter of credit shall be valid for a period of not less than one year. The applicant shall provide a copy of the letter of credit and the ratings agency reports that present the long-term obligation ratings of the issuer of the letter of credit to the Commission with the application to provide single billing service.

c) The applicant maintains at least 2 of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, or F-2 or higher from Fitch Ratings or its successor; or at least two of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor. The applicant shall provide a copy of the ratings agency reports that present applicant's ratings to the Commission with its application to provide single billing service.

d) All obligations of the applicant to Illinois utilities are unconditionally guaranteed by a counterparty that maintains at least two of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, or F-2 or higher from Fitch Ratings or its successor; or at least two of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, or BBB- or higher from Fitch Ratings or its successor. The uncon-

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ditional guarantee shall be valid for a period of not less than one year. The applicant shall provide a copy of the ratings agency reports that presents these ratings of the counterparty and a copy of the guarantee to the Commission with its application.

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Amended at 24 Ill. Reg. 15974, effective October 15, 2000.

Amended at 26 Ill. Reg. 7039, effective May 1, 2002.

SUBPART H. PROCEDURES FOR REPORTING CONTINUING COMPLIANCE WITH CERTIFICATION REQUIREMENTS

83 Ill. Adm. Code 451.700 (2009)

§ 451.700 Applicability of Subpart H

The requirements of this Subpart are in addition to the requirements of Subpart A. This Subpart does not apply to electric cooperatives or municipal systems making an election under Section 17-300 of the Act to become an alternative retail electric supplier.

Added at 24 Ill. Reg. 15974, effective October 15, 2000

83 Ill. Adm. Code 451.710 (2009)

§ 451.710 General Provisions

a) All ARES shall, at all times, continue to remain in compliance with the provisions of the Act and this Part, as now or hereafter amended. If an ARES received a certificate before the effective date of any provision of this Part, which provision applies to applicants seeking certification to serve customers with the same electrical demand or usage characteristics as the ARES, the ARES must demonstrate that it has come into compliance with such provision no later than April 30 of the year following the year during which such amendment took effect.

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b) No later than April 30 of each year, each ARES shall file all reports required under this Subpart. Reports shall be under oath, contain a cover letter title "Code Part 451 Continuing Compliance", and be filed with the Chief Clerk of the Commission with copies provided to the "Energy Division-ARES" and the "Financial Analysis Division-ARES" or their successors. The reports shall be identified with the name of the ARES as it appears in the most recent Commission order granting the ARES certification, as well as any post-certification name changes.

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c) For each supporting piece of documentation the ARES provides, it shall specifically state how such information complies with each applicable subsection of Code Part 451.

d) All reports shall provide the name, phone number, email address, and mailing address of at least one person to address questions from Illinois Commerce Commission Staff pertaining to that report.

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e) All reports made to the Commission by any ARES and the contents thereof shall be open to public inspection, unless otherwise ordered by the Commission. Such reports shall be preserved in the office of the Commission.

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f) Any ARES acquiring customers from another ARES shall report any such purchase or transfer of customer accounts no later than 30 days prior to the execution of the transaction. Any ARES receiving customer accounts from another ARES will be responsible to demonstrate its ability to meet the applicable financial, managerial, and technical requirements.

g) The compliance filing shall include the applicant's name and street address, and the names and addresses of all the ARES's affiliated companies involved in electric retail sales or purchases in North America.

Added at 24 Ill. Reg. 15974, effective October 15, 2000

*83 Ill. Adm. Code 451.720 (2009)*

§ 451.720 Erroneous or Defective Reports

a) When any report is erroneous or defective or appears to the Commission to be erroneous or defective, the Commission may notify the ARES to amend that report within 30 days of such notice, and before or after the termination of the period the Commission may examine the officers, agents, or employees, and books, records, accounts, vouchers, plant, equipment and property of the ARES, and correct items in the report the Commission finds defective or erroneous.

b) Any ARES that fails to make and file any report required by the Commission within the time specified, or to specifically answer any question propounded by the Commission within 30 days after the time it is lawfully required to do so, or within such further time, not to exceed 90 days, as may in its discretion be allowed by the Commission, shall, after notice and hearing forfeit its certificate.

Added at 24 Ill. Reg. 15974, effective October 15, 2000

Deleted: *83 Ill. Adm. Code 451.730 (2009)*¶

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§ 451.730 Certification of Compliance with Section 16-115(d)(5) of the Act (Repealed) ¶

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SOURCE: ¶

Added at 24 Ill. Reg. 15974, effective October 15, 2000.¶

Repealed at 32 Ill. Reg. 17126, effective November 1, 2008.¶

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83 Ill. Adm. Code 451.740 (2009)

§ 451.740 Financial Reporting Requirements

The ARES shall provide a copy of only those documents that the ARES requires to demonstrate that it continues to possess sufficient financial resources to serve the retail customers for which it has received a certificate of service authority. The applicable documents shall be submitted at the times specified below:

a) An ARES that seeks to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority using the criteria set forth in subsection (a)(1), (a)(3), (a)(3)(C), or (a)(4) of Section 451.110, 451.220, or 451.320 or Section 451.510(b), (c) or (d) shall submit a copy of the latest ratings report presenting the commercial paper or long-term credit or obligation ratings of the ARES, creditors, or guarantors, as applicable, from the ratings agencies between April 1 and April 30 of each year and within 15 days following any downgrade of such ratings previously filed with the Commission to a rating below A-1 or A-, if issued from Standard & Poor's or its successor, P-1 or A3, if issued from Moody's Investors Service or its successor, or F-1 or A-, if issued from Fitch Ratings or its successor. Within 30 days after a downgrade of the commercial paper or long-term credit or obligation ratings of the ARES or its creditors, affiliates, or guarantors, as applicable, to a level below the minimum required under this Part, the ARES shall submit a report that identifies the subsection under which the ARES is seeking to demonstrate that its financial resources remain sufficient for providing the services for which it has received a certificate of service authority and includes the information and documents that subsection requires.

b) An ARES that seeks to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority using the criteria set forth in subsection (a)(2), (a)(3), or (a)(4) of Section 451.110, 451.220, or 451.320 or Section 451.510(a) or (b) shall submit a copy of any modified, replacement, or additional credit agreements; unconditional guarantees; lines of credit; revolving credit agreements; payment bonds; and letters of credit, as applicable. This documentation shall be submitted at least 15 days in advance of any modification, cancellation or expiration of the financial agreements.

c) Between April 1 and April 30 of each year, an ARES that seeks to use the criteria specified in Section 451.110(a)(3), 451.220(a)(3), or 451.320(a)(3) to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority shall provide the peak amount of MW scheduled during the previous calendar year and the date on which that amount was scheduled. If the ARES has been serving Illinois retail customers for less than 12 months, then the ARES shall also provide an estimate of the maximum amount of MW it will schedule during the current calendar year.

d) Between April 1 and April 30 of each year, an ARES that seeks to demonstrate that it maintains sufficient financial resources to provide single billing services under Section 451.510(a) or (b) shall submit an updated good faith estimate of the amount the ARES expects to be obligated to remit to the utility under single billing tariffs adopted pursuant to Section 16-118(b) of the Act between April 1 and April 30 of each year.

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e) An ARES that seeks to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority using the criteria set forth in subsection (a)(2), or (a)(4) of Section 451.110, 451.220, or 451.320 shall submit a copy of its certified financial statements, or those of its parent, and accountant's report, as applicable, within 120 days after the close of its fiscal year.

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f) An ARES that seeks to maintain its certificate of service authority under Section 451.220(b) or 451.320(b) shall submit an updated version of the annual financial statements and accountant's report, if available, within 120 days after the close of its fiscal year.

g) An ARES that seeks to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority using the criteria set forth in subsection (a)(2) of Section 451.110, 451.220, or 451.320 shall provide:

- 1) A copy of the security or agreement that was provided and approved by the RTO used to serve as collateral for the energy the applicant procures from generation asset owners directly through the RTO including any updates, revisions, or modifications that may occur, within 15 days after filing same with the RTO;
- 2) Using the alternative method, the applicant's revenue from sales to Illinois retail customers may be used; in such circumstances, the revenue from sales to Illinois retail customers must be provided in the certified financial statements or in internal documents accompanied by a verified statement from a company officer.

h) An ARES that seeks to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority using the criteria set forth in subsection (a)(3) of Section 451.110, 451.220, or 451.320 shall demonstrate and certify it is a member of one or more Regional Transmission Organizations ("RTOs") and purchases 100% of its physical electric energy from the RTOs for delivery to the service territories of the utilities for which the applicant is seeking a certificate.

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i) Each ARES is required to certify that the most recent copy of its license or permit bond on file with the Illinois Commerce Commission is current and in full effect. In the event the original license or permit bond on file with the Illinois Commerce Commission is replaced or modified, the ARES is required to submit the new original license or permit bond pursuant to Section 451.50.

j) Insurance. Between April 1 and April 30 of each year, an ARES required to have in force commercial general liability insurance pursuant to Sections 451.110(b), 451.220(c), or 451.320(c) shall submit proof of that insurance in an amount not less than that in force when the ARES was granted its certificate of service authority. In addition, the ARES shall demonstrate that its commercial general liability insurance is effective for a period of not less than one year.

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#### SOURCE:

Added at 24 Ill. Reg. 15974, effective October 15, 2000.

Amended at 26 Ill. Reg. 7039, effective May 1, 2002.

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*83 Ill. Adm. Code 451.750 (2009)*

§ 451.750 Managerial Reporting Requirements

- a) An ARES shall certify during April of each year that it continues to maintain the required managerial qualifications for the service authority granted in its certificate. An ARES that meets the managerial qualifications requirements by entering into one or more contracts with others to provide the required services must identify each agent or contractor on whom the ARES relies to meet the requirements of this Part and must certify that the agent or contractor will comply with all Sections of this Part applicable to the function or functions to be performed by the respective agent or contractor.
- b) Any changes in personnel, agent(s), or contractor(s) in the part calendar year that were used to meet the managerial qualifications shall be addressed in the annual compliance filing by providing evidence showing how the ARES is continuing to meet the managerial qualifications.

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Added at 24 Ill. Reg. 15974, effective October 15, 2000

*83 Ill. Adm. Code 451.760 (2009)*

§ 451.760 Technical Reporting Requirements

- a) An ARES shall certify during April of each year that it continues to maintain the required technical qualifications for the service authority granted in its certificate. An ARES that meets the technical qualifications requirements by entering into one or more contracts with others to provide the required services must identify each agent or contractor on whom the ARES relies to meet the requirements of this Part and must certify that the agent or contractor will comply with all Sections of this Part applicable to the function or functions to be performed by the respective agent or contractor.
- b) Any changes in personnel, agent(s), or contractor(s) in the part calendar year that were used to meet the technical qualifications shall be addressed in the annual compliance filing by providing evidence showing how the ARES is continuing to meet the technical qualifications.

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Added at 24 Ill. Reg. 15974, effective October 15, 2000

*83 Ill. Adm. Code 451.770 (2009)*

§ 451.770 Kilowatt-hour Reporting Requirement

No later than March 1 of every year, each ARES shall file with the Chief Clerk of the Commission, and provide to the “Energy Division – ARES” and the “Financial Analysis Division – ARES”

or their successors, a report stating the total annual kilowatt-hours delivered and sold to retail customers within each utility service territory and the total annual kilowatts-hours delivered and sold to retail customers in all utility service territories in the preceding calendar year.

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Added at 24 Ill. Reg. 15974, effective October 15, 2000